

Date of 1994 Amendment note under section 251 of this title.

TERMINATION OF AUTHORITY TO ISSUE SOLICITATIONS FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Authority to issue solicitations for purchases of commercial items in excess of simplified acquisition threshold pursuant to special simplified procedures authorized by subsec. (a) of this section to expire three years after date certain amendments by section 4202 of Pub. L. 104-106 take effect pursuant to section 4401(b) of Pub. L. 104-106, set out as a note under section 251 of this title, see section 4202(e) of Pub. L. 104-106, set out as a note under section 2304 of Title 10, Armed Forces.

§ 428. Procedures applicable to purchases below micro-purchase threshold

(a) Requirements

(1) The head of each executive agency shall ensure that procuring activities of that agency, in awarding a contract with a price exceeding the micro-purchase threshold, comply with the requirements of section 637(a) of title 15, section 2323 of title 10, and section 7102 of the Federal Acquisition Streamlining Act of 1994.

(2) The authority under part 13.106(a)(1) of the Federal Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in effect on November 18, 1993, to make purchases without securing competitive quotations does not apply to any purchases with a price exceeding the micro-purchase threshold.

(b) Exclusion for micro-purchases

A purchase by an executive agency with an anticipated value of the micro-purchase threshold or less is not subject to section 644(j) of title 15 and the Buy American Act (41 U.S.C. 10a-10c).

(c) Purchases without competitive quotations

A purchase not greater than \$2,500 may be made without obtaining competitive quotations if an employee of an executive agency or a member of the Armed Forces of the United States authorized to do so determines that the price for the purchase is reasonable.

(d) Equitable distribution

Purchases not greater than \$2,500 shall be distributed equitably among qualified suppliers.

(e) Implementation through FAR

This section shall be implemented through the Federal Acquisition Regulation.

(f) Micro-purchase threshold defined

For purposes of this section, the micro-purchase threshold is the amount of \$2,500.

(Pub. L. 93-400, §32, as added Pub. L. 103-355, title IV, §4301(a), Oct. 13, 1994, 108 Stat. 3346; amended Pub. L. 104-106, div. D, title XLIII, §§4304(b)(4), (c)(3), 4311, Feb. 10, 1996, 110 Stat. 664, 671.)

REFERENCES IN TEXT

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (a)(1), is section 7102 of Pub. L. 103-355, which is set out as a note under section 644 of Title 15, Commerce and Trade.

The Buy American Act, referred to in subsec. (b), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-106, §4311, substituted “an employee of an executive agency or a member of the Armed Forces of the United States authorized to do so” for “the contracting officer”.

Pub. L. 104-106, §4304(b)(4), (c)(3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “For purposes of section 423 of this title, an officer or employee of an executive agency, or a member of the Armed Forces of the United States, shall not be considered a procurement official if—

“(1) the contracting authority of the officer, employee, or member does not exceed \$2,500; and

“(2) the head of the contracting activity concerned (or a designee of the head of the contracting activity concerned) determines that the duties of the position of that officer, employee, or member are such that it is unlikely that the officer, employee, or member will be required to conduct procurements in a total amount greater than \$20,000 in any 12-month period.”

Subsecs. (d) to (g). Pub. L. 104-106, §4304(c)(3), redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section effective Oct. 13, 1994, and to be implemented in Federal Acquisition Regulation not later than 60 days after Oct. 13, 1994, see section 4301(c) of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 10a of this title.

§ 428a. Special emergency procurement authority

(a) Applicability

The authorities provided in this section apply with respect to any procurement of property or services by or for an executive agency that, as determined by the head of such executive agency, are to be used—

(1) in support of a contingency operation; or

(2) to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States.

(b) Increased thresholds

For a procurement to which this section applies under subsection (a) of this section—

(1) the amount specified in subsections (c), (d), and (f) of section 428 of this title shall be deemed to be—

(A) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) the term “simplified acquisition threshold” means—

(A) \$250,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) \$1,000,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

(c) Increased limitation on use of simplified acquisition procedures

For a procurement to which this section applies under subsection (a) of this section, the

\$5,000,000 limitation in the following provisions of law shall be deemed to be \$10,000,000:

- (1) Section 427(a)(2) of this title.
- (2) Section 2304(g)(1)(B) of title 10.
- (3) Section 253(g)(1)(B) of this title.

(d) Commercial items authority

(1) The head of an executive agency carrying out a procurement of property or a service to which this section applies under subsection (a)(2) of this section may treat such property or service as a commercial item for the purpose of carrying out such procurement.

(2) A contract in an amount greater than \$15,000,000 that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (1) shall not be exempt from—

(A) cost accounting standards promulgated pursuant to section 422 of this title; or

(B) cost or pricing data requirements (commonly referred to as truth in negotiating) under section 2306a of title 10 and section 254b of this title.

(e) Contingency operation defined

In this section, the term “contingency operation” has the meaning given such term in section 101(a)(13) of title 10.

(Pub. L. 93–400, §32A, as added Pub. L. 108–136, div. A, title XIV, §1443(a)(1), Nov. 24, 2003, 117 Stat. 1675; amended Pub. L. 108–375, div. A, title VIII, §822, Oct. 28, 2004, 118 Stat. 2016.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–375, §822(1), added par. (1) and struck out former par. (1) which read as follows: “the amount specified in subsections (c), (d), and (f) of section 428 of this title shall be deemed to be \$15,000; and”.

Subsec. (b)(2)(B). Pub. L. 108–375, §822(2), substituted “\$1,000,000” for “\$500,000”.

AUTHORITY TO ENTER INTO CERTAIN TRANSACTIONS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK

Pub. L. 108–136, div. A, title XIV, §1441, Nov. 24, 2003, 117 Stat. 1673, provided that:

“(a) **AUTHORITY.**—

“(1) **IN GENERAL.**—The head of an executive agency who engages in basic research, applied research, advanced research, and development projects that—

“(A) are necessary to the responsibilities of such official’s executive agency in the field of research and development, and

“(B) have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack,

may exercise the same authority (subject to the same restrictions and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code, except for subsections (b) and (f) of such section 2371.

“(2) **PROTOTYPE PROJECTS.**—The head of an executive agency may, under the authority of paragraph (1), carry out prototype projects that meet the requirements of subparagraphs (A) and (B) of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be

used when entering into agreements to carry out projects under subsection (a) of that section and that the period of authority to carry out projects under such subsection (a) terminates as provided in subsection (g) [now (i)] of that section.

“(3) **APPLICATION OF REQUIREMENTS AND CONDITIONS.**—In applying the requirements and conditions of section 845 of the National Defense Authorization Act for Fiscal Year 1994 under this subsection—

“(A) subsection (c) of that section shall apply with respect to prototype projects carried out under this paragraph; and

“(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under subsection (d) of that section.

“(4) **APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.**—

“(A) **OMB AUTHORIZATION REQUIRED.**—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget to use the authority for such project.

“(B) **RELATIONSHIP TO AUTHORITY OF DEPARTMENT OF HOMELAND SECURITY.**—The authority under this subsection shall not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2224) [6 U.S.C. 391] is in effect.

“(b) **ANNUAL REPORT.**—The annual report of the head of an executive agency that is required under subsection (h) of section 2371 of title 10, United States Code, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

“(c) **REGULATIONS.**—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the date on which such regulations take effect.

“(d) **TERMINATION OF AUTHORITY.**—The authority to carry out transactions under subsection (a) shall terminate on September 30, 2008.”

§ 429. List of laws inapplicable to contracts not greater than simplified acquisition threshold in Federal Acquisition Regulation

(a) List of inapplicable provisions of law

(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law that is properly included on the list pursuant to paragraph (2) may not be construed as applicable to such contracts or subcontracts (as the case may be) by an executive agency. Nothing in this section shall be construed to render inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold any provision of law that is not included on such list.

(2) A provision of law described in subsection (b) of this section that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1), unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(b) Covered law

A provision of law referred to in subsection (a)(2) of this section is any provision of law that,